

**MINUTES  
NATURAL RESOURCES INTERIM COMMITTEE  
MEETING - OCTOBER 28, 2005  
10:00 a.m. to 3:00 p.m. Room 420, Statehouse, Boise, Idaho**

The meeting was called to order by cochairman Senator Don Burtenshaw at 10:15 a.m. Other members present were cochairman Representative Dell Raybould, Senator Gary Schroeder, Senator Chuck Coiner, Senator Clint Stennett, Representative Bert Stevenson, Representative Scott Bedke and Representative Jim Clark. Senator Stan Williams and Representative Wendy Jaquet were absent and excused.

Ad hoc members present were Senator Brad Little, Representative Mike Moyle, Representative Jack Barraclough, Representative Pete Nielsen, and Representative Donna Pence. Senator Skip Brandt was absent and excused.

Others present were Director Karl Dreher, Dave Tuthill, Hal Anderson, Brian Patton, Dave Blew and Phil Rassier, Idaho Department of Water Resources; Linda Lemmon, Thousand Springs Water Users; Randy MacMillan and Pat Sullivan, Clear Springs Foods; Norm Semanko, Idaho Water Users Association; Jerry Rigby, Idaho Water Resources Board; Bill Thompson, Minidoka Irrigation District; Albert Lockwood, Northside Canal Company/Committee of 9; Ray Houston, Legislative Services Office/Budget and Policy; Rich Rigby, Matt Howard and Gail McGarry, Bureau of Reclamation; Joann Hunt and Judi Danielson, Northwest Power Planning Council; Chris Meyer and Michael Creamer, Givens Pursley; Dana Hofstetter, Hofstetter Law Office; Lynn Tominaga and Brenda Tominaga, Idaho Ground Water Association; Clive Strong and Michael Orr, Attorney General's Office; Pat Madarieta, Idaho Department of Commerce and Labor; Dave Hovland, Idaho Department of Environmental Quality; Paul Arrington, Barker, Rosholt and Simpson; Sharon Kiefer, Idaho Department of Fish and Game; Allyn Meuleman, U.S. Bureau of Reclamation; Ted Diehl, Northside Canal Company; Lynn Harmon, American Falls Recharge District 2; Don Hagen, University of Idaho; Rich Hahn, Idaho Power; Martha Arcos, Lane Jolliffe and

Erik Makrush, Congressman Otter's Office; Layne Bangerter, Senator Crapo's Office; Ted Whiteman, Jerome Cheese Co.; Rex Minchy, ASGWD; Dan McFAddan, LSRARD; Bert Bowler, IRU; Kent Kunz, Governor's Office; Dustin Miller, IFBF; Dar Olberding, Idaho Grain Producers; Jane Wittmeyer, IFA; Suzanne Schaefer, SBS Associates, LLC.; and Dick Rush, Idaho Association of Commerce and Industry.

**Mr. Phil Rassier**, Deputy Attorney General, Idaho Department of Water Resources, was introduced to give an update on conjunctive management litigation. He distributed a handout that summarized administrative and judicial proceedings relating to the Surface Water Coalition delivery call and spring user delivery calls. The handout is available through the Legislative Services Office. Mr. Rassier provided the Committee with the following summary:

**1. Administrative proceedings related to the Surface Water Coalition water delivery call.**

**Mr. Rassier** said that on January 14, 2005, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company ("Surface Water Coalition" or "Coalition") filed a letter and a petition with the Director of the Idaho Department of Water Resources seeking the administration and curtailment of junior priority ground water rights from the Eastern Snake Plain Aquifer (ESPA). The letter sought curtailment of junior priority ground water rights within Water District 120 and the petition sought curtailment of junior priority ground water rights within the American Falls Ground Water Management Area, the curtailment of junior priority ground water rights within areas of the ESPA not within an organized water district or ground water management area, and the designation of the ESPA as a Ground Water Management Area.

On February 14, 2005, the Director issued an order that denied the petition to designate the ESPA as a Ground Water Management Area and designated the other three matters as contested cases under the Department's Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11.

On May 2, an amended order was issued that required consumptive ground water

rights in Water Districts No. 120 and No. 130 with priority dates of February 27, 1979, and later to provide replacement water to the members of the Surface Water Coalition for depletions to reach gains in the Snake river between the Near Blackfoot Gage and the Minidoka Gage or be curtailed.

The Director determined that there was some degree of material injury based on the adequacy of the water supply considering both natural flow and storage water available to the members of the Coalition. He determined that the depletionary effects from junior ground water diversions that would occur in 2005 would equal a total of 133,000 acre feet over time and further determined that the amount of that depletionary effect that would turn up in 2005 would be 27,700 acre feet. This is the amount the Director required the junior ground water appropriators or right holders to provide as replacement water to be allowed to continue operations for 2005.

The order was issued by the Director prior to any hearing before the Idaho Department of Water Resources and it provided that any party who was aggrieved by that order could petition or request a hearing. As a result, the Surface Water Coalition and other parties including the ground water users requested a hearing and the parties are now engaged in discovery. Expert reports are due on December 30, 2005.

In the meantime, five members of the Surface Water Coalition have filed a lawsuit in Gooding County for declaratory relief asking the court to review the conjunctive management rules the Director used in developing and issuing his May 2 order. The lawsuit requests that the rules be reviewed for constitutionality both on their face and as applied by the Director.

The Director and the Idaho Department of Water Resources filed a motion to dismiss the lawsuit arguing that it was a premature appeal of the May 2 order and that the Coalition should be required to exhaust their administrative remedies before seeking judicial review before the district court. The motion was argued before Judge Wood on October 18, 2005, and the parties are awaiting a decision.

The Coalition also filed a motion for summary judgment with the district court on October 17, 2005, with argument set for November 29, 2005.

## **2. Idaho Power Lawsuit.**

**Mr. Rassier** stated that on July 22, 2005, the Director issued an order denying the Idaho Power Company party status in the Surface Water Coalition delivery call contested case proceeding before the Department on the grounds that Idaho Power had not demonstrated that it was an aggrieved party entitled to a hearing before the Department under the provisions of Section 42-1701A(3), Idaho Code. Idaho Power filed a petition for review with the district court in Ada County which is now pending hearing.

### **3. Administrative and judicial proceedings related to Spring User delivery calls.**

#### **Rangen, Inc. Delivery Call**

**Mr. Rassier** explained that the Director issued a second amended order in response to the Rangen delivery call on May 19, 2005 denying the call upon the grounds that it was futile. Rangen and others filed petitions with the Department requesting a hearing to contest the May 19 order. The requests were granted but a hearing date has not yet been scheduled.

#### **Rangen SRBA Court Filing**

On August 12, 2005, Rangen filed a motion with the Snake River Basin Adjudication (SRBA) District Court asking the court to enter an order enforcing its prior Order Granting State of Idaho's Motion for Order of Interim Administration. Rangen's motion asserts that while the Director is purporting to administer water rights under the authority of the SRBA court's Interim Administration Order, the Director is not administering water rights in accordance with partial decrees as authorized and required by the court's order. The motion was argued before Judge Melanson of the SRBA District Court on October 14, 2005, and the parties are awaiting a final decision.

#### **Clear Lakes Trout Company**

On June 8, 2005, Clear Lakes Trout Company filed a complaint against the Director in the Gooding County District Court, Case No. CV-2005-426 seeking a writ of mandate to compel the Director to administer junior ground water rights in response to a water delivery call made by Clear Springs Foods and administer only against Clear Lakes Trout Company as a junior surface water user with rights from a shared water source. The Director filed a motion to dismiss. Subsequent to argument in August, IGWA petitioned to

intervene. The matter is now fully submitted and the parties are awaiting the court's decision.

#### **Blue Lakes Trout Farm Inc. Delivery Call**

On May 19, 2005, the Director issued an order in response to a delivery call made by Blue Lakes Trout Farm on March 22, 1005, for administration of junior water rights in Water District 130. The Director determined that there was material injury amounting to 33 c.f.s. The Director's order allows for mitigation to be phased in over a five year period with a minimum of 10 c.f.s. required in 2005. Blue Lakes requested a hearing to contest the provisions of the order. Several status conferences have been held but a hearing date has not yet been scheduled.

#### **Clear Springs Foods Delivery Call**

On July 8, 2005, the Director issued an order in response to two water delivery calls made by Clear Springs Foods, Inc. on May 2, 2005, for the administration of junior ground water rights in Water District 130. Clear Springs made the delivery call based upon spring source water rights held for its Snake River Farm and Crystal Springs Farm fish propagation facilities. The Director determined that after a number of corrective actions by Clear Springs, mitigation in the amount of 8 cfs, 16 cfs, 23 cfs, 31 cfs, and 38 cfs in the Buhl to Thousand Springs reach would be required for junior ground water rights later in priority than February 4, 1964, for the years 2005 to 2009, respectively, to protect the water rights of Snake River Farm from being materially injured. Clear Springs requested a hearing to contest the provisions of the order. A status conference was held but a hearing date has not yet been scheduled.

#### **Billingsly Creek Ranch Delivery Call**

On July 29, 2005, the Director issued an order in response to a water delivery call made by Billingsly Creek Ranch on March 21, 2005, for the administration of junior ground water rights in Water District 130. The Director denied the call upon the grounds that it was futile because curtailing ground water rights junior in priority to March 19, 1959, would not produce a significant quantity of water that would accrue to the entirety of the Thousand Springs to Malad Gorge spring reach from which the Billingsly Creek Ranch rights are diverted. Billingsly Creek filed a petition for hearing which has not yet been scheduled.

### **John W. Jones Delivery Call**

On July 29, 2005, the Director issued an order in response to a water delivery call made by John W. Jones on May 10, 2005, for the administration of junior ground water rights in Water District 130. The Director denied the call upon the grounds that it was futile because curtailing ground water rights junior in priority to July 8, 1969, would not produce a significant quantity of water that would accrue to the entirety of the Thousand Springs to Malad Gorge spring reach from which the Jones right is diverted. Jones filed a petition for hearing which has not yet been scheduled.

**Representative Stevenson** said it was his understanding that the conjunctive management rules had been before the Supreme Court and the Court ruled that the bodies had to be managed conjunctively. **Mr. Rassier** clarified that the conjunctive management rules were not actually before the Supreme Court. There was a case filed in 1994-95 challenging the conjunctive management rules in the SRBA court and the state moved that was not the appropriate forum to hear the case. That procedural issue was what was before the Supreme Court. There have been no other cases relating to the conjunctive management rules before the Court. There was a case involving Basin-Wide Issue 5 in the SRBA proceeding as to the general provision that should apply to all water rights adjudicated by the court in the SRBA and whether they were subject to conjunctive administration because of the interrelationship between the ground water sources and the surface water. So to that extent, **Mr. Rassier** said, there has been a determination that we have an interconnected source.

In response to a question from **Senator Stennett** regarding the Rangen call, **Mr. Rassier** said that it was not based on economics but on the amount of water that would show up in the spring reach of the river. The Director's order contains a finding that 660,000 acres, if curtailed, would result in 5 cfs showing up in the spring reach from which the Rangen right is diverted. He said the amount that would actually show up at the Rangen point of diversion would be significantly less.

**Representative Bedke** asked for more information regarding the writ of mandate to compel the Director in the Clear Springs lawsuit. **Mr. Rassier** explained that the writ of mandate is an extraordinary form of relief that courts are entitled to provide a party when a party comes to the court showing that a public official is not

carrying out his duty under the law. The court may issue this writ to force the public official to act. There is also a writ of prohibition to get a public official to stop doing something that is beyond what he is allowed to do. **Representative Bedke** asked when resolution to the motion for that writ can be expected. **Mr. Rassier** said that the judge has said as quickly as possible which will probably be in a few weeks.

**Senator Little** asked if there is going to be a constitutional challenge on conjunctive management. **Mr. Rassier** said there could be a constitutional challenge to conjunctive management rules. The question is how that will be presented to the court. The Department's view is that it should be done with a complete record showing how the Director has applied those rules. Then anyone that does not agree with the decision of the Director can petition for review of the Director's decision and in that review are entitled to challenge the constitutionality of the rules used to make the decision.

**Senator Coiner** said that the conjunctive management rules were promulgated in the early 1990s and surface water users did not like or agree with them. In short of challenging them in court the Director said he would address them. Since that time there have been a couple of attempts to look at the rules but nothing has been accomplished. At this time the Director is making decisions using rules that neither party completely agree upon.

**Senator Burtenshaw** asked how the rules were developed. **Mr. Rassier** said that the promulgation process involved negotiated rulemaking and included extensive meetings with water users. It was clear that differences existed between water users as to what those rules should look like. In the end the Director had to make a decision on how to write the rules. **Senator Burtenshaw** commented that the Director has to abide by the rules in place now and **Mr. Rassier** responded that was correct because the rules are now in force.

**Mr. Clive Strong**, Division Chief, Natural Resources Division Attorney General's Office, was the next speaker. He said that while we continue to have problems within the state, the issues on a regional basis are much more extensive and complicated to work through. **Mr. Strong** noted that he would begin with an update relating to the National Wildlife Federation vs. NOAA and the American Rivers vs. NOAA cases and the relationship between those cases, followed by a brief discussion of the Hells Canyon relicensing process and how that fits into the

equation.

**Mr. Strong** reminded the Committee that the National Wildlife Federation vs NOAA case deals with the Federal Columbia River Power System (FCRPS) and involves a requirement that the federal agencies that are operating those dams on the lower Snake river and Columbia river consult with the National Oceanic and Atmospheric Administration (NOAA) fisheries services to determine the effect the operation of those dams has on listed anadromous fish. **Mr. Strong** noted that the case has been through many iterations and the most recent dealt with the biological opinion for the operation of the project in 2004. According to **Mr. Strong**, the biological opinion provided that the operation of those facilities would not cause jeopardy to the listed species based upon a suite of measures that were contained in the biological opinion called reasonable and prudent alternatives that set forth activities that the federal government would engage in for the operation of those dams. These included a number of offsite mitigation activities to mitigate the effects the operation of the dams has on the species as well as addressing spill and transportation of fish through those dams.

**Mr. Strong** went on to explain that an action was brought by the National Fish and Wildlife Federation seeking to have the 2004 biological opinion set aside. That action was brought in the federal district court of Oregon and resulted in the judge issuing an opinion this summer invalidating the biological opinion. **Mr. Strong** said that the judge, upon review of the biological opinion, found that the federal agencies had gone beyond his expectation for their review of his prior decision and had manufactured a new definition for determining jeopardy of the species and that the jeopardy analysis was inaccurate and was inconsistent with the Endangered Species Act. He also found that the agencies failed to take into account critical habitat issues. Based upon those findings, the court invalidated the biological opinion.

**Mr. Strong** continued, however, that in making this determination, the court left the opinion in place for purposes of providing incidental take coverage for the actions of the agencies. He explained that this means if someone is operating consistent with the biological opinion, they are not subject to civil and criminal sanctions under the Endangered Species Act. In doing this, the judge has allowed the parties to proceed with motions for injunctive relief from the agencies.

**Mr. Strong** said that one of these relief measures involved the plaintiffs asking the



judge to order certain spill activities at the dam. There is a belief among the plaintiffs that spill is a better alternative than transportation of the fish through the transportation system. The judge entered such an order this summer and pursuant to that order there was substantial spill across the spillways having significant impact on the ability of those facilities to generate power. The order was appealed to the 9th Circuit Court of Appeals and that court reaffirmed the judge's decision.

**Mr. Strong** said there is now a motion for preliminary injunction which would deal with the operation of the projects for the coming season. It is anticipated through that injunctive relief there will be a specific request for more spill than last summer. It is also likely there will be a request from the plaintiffs that there be additional flow augmentation which could impact the operation of the Idaho facilities.

**Mr. Strong** said the stakes are fairly high and decisions in the National Wildlife Federation case will likely be issued before the end of this year. While these injunctive relief actions are going forward, the judge has entered an order authorizing an appeal of his original decision invalidating the biological opinion. The State of Idaho is an intervener in that action and will be filing a motion to appeal that decision to the 9th Circuit Court of Appeals. Pending appeal, the court directed the agency to develop a new biological opinion within one year. **Mr. Strong** said the reality of achieving that within one year is suspect. The parties, particularly the defendants and interveners, have requested a two year period and the judge refused. The court did leave open the possibility that a request for additional time could be made at the end of the one year period provided the judge was satisfied that the federal agencies were making progress.

**Mr. Strong** said the situation at this time, in large measure, is that the operation of the facilities is being governed by procedural matters that are occurring in the U.S. District Court in Oregon on the FCRPS projects.

**Mr. Strong** moved on to discuss the American Rivers vs NOAA case. He stated that this case challenged the 2005 Upper Snake Biological Opinion regarding the operation of the upper Snake river projects. These projects are specifically those above Hells Canyon and operated by the Bureau of Reclamation. He said there are a total of about 18 facilities involved.

According to **Mr. Strong**, in the past it has been successfully argued that these

projects are not part of the FCRPS. They are operated primarily for irrigation although they do generate some power. On that basis, NOAA has worked with the Bureau of Reclamation to issue a separate biological opinion addressing the effect of those projects on the listed species.

**Mr. Strong** explained that there is now the issue of the biological opinion for the headwater areas of the Snake river and a biological opinion dealing with the FCRPS projects. American Rivers and a number of other environmental plaintiffs have filed a challenge to the biological opinion that was issued as part of the Nez Perce Indian Water Rights Settlement.

**Mr. Strong** explained that as part of that settlement there was an agreement that the federal government would issue a biological opinion, which it did in April 2005, that provides for the operation of those projects for up to a 30 year period pursuant to the terms and conditions of the agreement. That biological opinion superceded the prior 2004 biological opinion for the operation of the upper Snake river projects that was part of a lawsuit challenging the opinion filed by American Rivers.

Since that time, **Mr. Strong** explained that the American Rivers plaintiffs have filed a supplemental complaint that seeks to invalidate the 2005 biological opinion for the operation of the upper Snake river projects. It does so on the same basis as the decision that was issued in the FCRPS biological opinion. The argument is that the federal government used the wrong jeopardy analysis as was used in the FCRPS projects that was invalidated by Judge Redden and that they failed to consider the critical habitat.

An additional issue, according to **Mr. Strong**, is the argument that the Upper Snake river projects should not be treated separately from the FCRPS projects and that they should all be included in one consultation and combined into one big suit to determine whether the operation of all of the dams along the Snake and Columbia rivers are causing jeopardy to the species and the resulting impact.

**Mr. Strong** said that lawsuit is progressing and, as of yesterday, the judge issued an order granting the plaintiffs permission to file the supplemental complaint pending in the U.S. District Court of Oregon. There is a status conference scheduled for November 7, 2005, which will discuss the time frame for litigating the issues in the American Rivers lawsuit. As the state proceeds, it will be required

to file an answer to the complaint. **Mr. Strong** said he would expect the state to be in fairly significant litigation before the end of the year over whether the 2005 biological opinion should be invalidated and, if so, whether the opinion will remain in place pending new injunctive relief. He said that this is the point where it is likely the National Wildlife Federation case and this case will come together.

**Mr. Strong** added that both of these pieces of litigation have a tremendous amount of potential impact on Idaho operations and wanted the Committee to be aware of them.

**Mr. Strong** continued with a status report relating to the Hells Canyon relicensing. He noted that as part of the Federal Power Act, once a license expires an applicant is required to ask for a new license. Idaho Power has done this and they have been in negotiations with many of the same parties involved in the other litigation along with other federal and state agencies to try to negotiate terms and conditions for the new license. Those negotiations have faltered and at this point in time are moving before FERC to have terms and conditions proposed by the various federal agencies.

**Mr. Strong** said a significant part of the discussions center around the notion of how much flow augmentation there should be at Hells Canyon and whether it is water quantity or temperature related. He said to understand the interplay of all three cases, it is important to understand the various players involved and their objectives.

**Representative Nielsen** asked whether the biological opinion that is being challenged is the same as the one in the Nez Perce Agreement. **Mr. Strong** replied that it is. **Representative Nielsen** also asked, in the event the opinion is not upheld, whether that will offset or negate the Nez Perce agreement. **Mr. Strong** agreed that the biological opinion was a major selling point for Nez Perce Agreement. He said the Agreement required the federal agencies to issue a no jeopardy biological opinion and that has been done. It was understood that others could challenge the biological opinion. The way the Agreement is structured right now is that once the Agreement becomes effective it will stand, but if the biological opinion is overturned, the parties could withdraw from that component of the Agreement.

**Mr. Strong** explained that for the Nez Perce Agreement to be fully effective, it

requires completion of the biological opinion for the upper Snake river projects, agreement on a section 6 program in the Salmon and Clearwater basins and state, congressional and tribal ratification as well as a court decree. The parties are now waiting on the decree from the district court. There has been an appeal by the Shoshone Tribe based on alleged impacts to their interests. **Mr. Strong** stated they do believe that has been resolved by allowing the tribe to have future input regarding changes to instream flows. The Governor and Water Board have issued a letter to the Shoshone Bannock Tribe acknowledging they will have input in these matters. The Tribe's counsel has represented that he will advise his client to withdraw their objections to the Agreement based upon that letter. **Mr. Strong** said, assuming that happens, there is approval of the proposed water rights submitted to the SRBA court, that objection to consumptive use claims, springs and fountains claims and the instream flow claims are resolved, and the decree is issued, the Nez Perce Agreement will be in full force and effect. Only one objection has been filed.

**Representative Nielsen** also asked whether flow augmentation means more than the 427,000 acre feet. **Mr. Strong** responded that the complaint itself does not seek additional flows but it is expected that they will do so.

**Representative Bedke** asked, regarding the spill order, if there is evidence that this worked biologically. **Mr. Strong** said many potential factors are involved in survival of the fish so it hard to tell. In his opinion is too early to tell. Certain parties are alleging that the spill program did help fish.

**Mr. Strong** went on to give the Committee an update of the CREP program. He said they are working with Department of Agriculture on the proposal and the adequacy of the enforcement and monitoring program, how to include priority acres, and the amount of the state match for funding.

**Mr. Strong** said a conference call was held with the federal agency to go over monitoring and enforcement and it has been resolved. The priority acres issue has been more about trying to work the current state priority acres that are under the cap and making sure priority acres are available in the Eastern Snake River Plain Aquifer. **Mr. Strong** noted that based on conversations he has had it appears as though that issue is relatively well handled.

According to **Mr. Strong**, the important issue is funding. CREP regulations

require a 20% state match with 10% being in cash for benefits to program participants. The state has not had a problem meeting the 20% goal. However, the problem has been what constitutes cash payments to participants. **Mr. Strong** said the federal agency said that is approximately \$17 million in state cash contribution. They have reached agreement with the agency that the CREP coordinator position will count as a cash contribution as will soil conservation grants and loans program. The Idaho Department of Water Resource grant program that is authorized by the Legislature will also count as cash. With those three items included, the state has come up with a little more than \$10 million in cash contributions so far.

**Mr. Strong** noted that the plan is to request appropriation from the legislature of up to \$5 million in additional funding over the 15 year period. He said the indication is that plan is acceptable and they are in the process of resubmitting the proposal which they hope to do by next week. The next step will be to negotiate the actual terms and conditions of a CREP agreement and then complete an environmental assessment in order be in NEPA compliance. That process is already underway. It is hoped that by the end of the year everything will be in place to have a CREP program up and running.

**Representative Stevenson** asked whether it is looking like the contracts will be written in January. **Mr. Strong** said that was correct. He said that is probably the earliest it could occur.

**Representative Bedke** commented that even though CREP has been pursued as an avenue to allow voluntary curtailment, parties have still pursued lawsuits. He asked **Mr. Strong** whether the CREP program is still an important part of the final solution and whether a judge could rule it unnecessary. **Mr. Strong** said it is a fair assessment that the litigation is directed at the uncertainty about how much the obligation is going to be, not whether there is an obligation. The reality is that spring flows are declining, the question is the level of impact. From his perspective, they will have to resolve the litigation but programs such as CREP still need to be put in place to solve the issues. **Mr. Strong** said the objective is to have the CREP program in place for the crop year 2006.

**Mr. Brian Patton and Mr. Dave Blew**, Idaho Department of Water Resources were the next speakers. They presented a power point relating to the W-Canal recharge project that has been proposed. A complete copy of there presentations is

available through the Legislative Services Office.

**Mr. Blew** began by discussing some of the issues and challenges associated with the recharge program. Those issues and challenges include:

- C Water availability
- C Organization structure and funding
- C Recharge site development
- C Recharge site operation

**Mr. Blew** stated that the issue of organization structure and funding has been partially solved. The Idaho Water Resource Board, for the purposes of the pilot project, has decided that it will be the responsible party and provide sponsorship. It has also agreed to provide some funding for the project along with a grant from the Bureau of Reclamation. **Mr. Blew** said that with that they will be able to get the pilot project off the ground.

**Mr. Blew** went on to say that the other three issues still exist. He said that it is hoped that if this funding does become available and the pilot project moves forward, some of the issues relating to recharge site development will begin to be addressed.

According to **Mr. Blew**, water availability continues to be a major issue. He said there is a water right for recharge that amounts to about 1,200 cfs for diversion at Milner Dam but there are a number of legal issue related to when they can actually divert that water right relative to power production downstream of Milner. He said that it is hoped that development of the pilot project will help address some of these issues as well.

**Mr. Blew** said that the issue of site operation will be addressed once the pilot project is up and running.

**Mr. Blew** went on to discuss development technology for recharge on the Eastern Snake River Plain. He said they faced a number of challenges including:

- C How to successfully implement a recharge program on the ESPA;
- C Determining the technical issues related to managed recharge;
- C How to develop recharge sites or systems that have a high degree of

- reliability; and
- C How to develop a program to meet goals and objectives of managed recharge.

**Mr. Blew** said one problem they face is the limitation of the soils and subsurface geology on the ESRP. He said that they know canals leak a good deal of water and, with a managed recharge program, they want to take what the canal is doing over 40 or 50 miles and try to concentrate it to happen over a 20 to 40 acre area. He added that this brings about some serious technological challenges.

**Mr. Blew** said that surface filtration of water is required to protect ground water quality but one of the major issues they face is clogging. This is the number one problem associated with managed recharge and they know that these sites will require periodic cleaning and scarifying. One challenge faced in Water District 130 in the Magic Valley is the very limited amount of high permeable soils they would really like to use for recharge.

**Mr. Blew** showed an example on the X1 canal that shows the soil permeability is anywhere from 2 inches to 4 inches per hour or 4 to 12 feet per day. He noted that this sounds good for a recharge site but there really needs to be more than that. As a result, he said that the Department has been doing some larger scale ring infiltration tests based on techniques used in Arizona. These are trials that are run for about 5 hours in the field to try to get an estimate of the long term hydrologic conductivity of the soil.

**Mr. Blew** went on to say that the soil infiltration rates at this site is about 9 feet per day. However in looking at the long term hydrologic conductivity of the site, it was calculated to be about .8 feet per day to 1.1 feet per day. **Mr. Blew** said this is really some of the better soil that we have in the area in terms of hydrologic conductivity. To have a really successful recharge site, 2 feet per day would be necessary. **Mr. Blew** said they are still going to try to make this site work but they are marginal for recharge sites.

**Mr. Blew** also addressed some of the problems that exist with subsurface geology using a well in the Minidoka area. He said that their information shows that until the well goes below 40 feet, it is made up of unfractured basalt that water will not permeate through. In this well at about 50 feet, there was a layer of dense clay and

it was not until a depth of about 90 feet that they begin to see what is generally thought of as typical ESPA soil with vertical and horizontal fractures. This is a site that was labeled as a recharge site. However, he said that after looking at the well cams they would recommend using injection wells for recharge at this site.

**Mr. Blew** noted an addendum to a report issued in 1962 relating to the feasibility of recharge on the ESRP stated “it is apparent from the preceding general description and discussion of the individual recharge areas, that one of the major problems in artificial recharge in the Snake River Plain is to get water through layers of low-permeability materials, down to the main water table.” **Mr. Blew** said this includes not only the soil but the areas of subsurface geology that include the areas of massive basalts and clay. The 1960's report made some recommendations relating to the use of injection wells to get water to move past those areas of low infiltration into the ground water table. **Mr. Blew** indicated this is something they will evaluate as the pilot project moves forward.

**Mr. Blew** continued that another challenge is the need for surface filtration of the water to protect human health and safety. In some cases these recharge sites are located close to downstream users and domestic wells. He said that one hundred eighty days travel time is probably the minimum amount of travel time they would want, particularly if there is a bacterial load.

**Mr. Blew** also noted that access to the canals prior to the irrigation season and at the end of the irrigation season is particularly important and that to have a meaningful recharge system, some issues relating to the Palisades agreement are going to have to be discussed to allow access to canals outside of the irrigation season.

**Mr. Blew** said they have also looked at recharge in the Upper Snake basin, above American Falls, using only the existing canal capacity and their recharge capacity. They determined that the incidental losses through those canals may provide more capacity than the water that would ever be available on an annual basis. Many of those canals are located close to the river with coarse alluvium. These are locations where they would like to see recharge sites. He said that they believe that the Upper Snake basin could do a lot of recharge if they could gain access to those canals prior to and at the end of the irrigation season. **Mr. Blew** also pointed out that recharge through the upper Snake canals returns to the Snake river on a very short time scale.



**Mr. Blew** said that they would like to start with recharge efforts by developing some small pilot projects to evaluate the effectiveness and cost. They want to intensify efforts at qualifying recharge capacity of potential recharge sites. There were a number of recharge sites identified in feasibility studies and some of those are still believed to have potential. They are also looking at evaluating the recharge capacity of the canal systems themselves.

**Mr. Blew** said there are implications statewide from recharge on the Eastern Snake Plain. There are some obvious economic benefits if the system works. Also the development of a technological frame for recharge that can be used statewide would be helpful. **Mr. Blew** said there is also a legal and administrative framework associated with recharge and water right issues that needs to be developed. He also noted that they need to determine whether the Water Resource Board is the appropriate mechanism for sponsoring projects. **Mr. Blew** concluded by noting that the development of a long term strategy for funding managed recharge is very important in order to continue with these programs. He said that it is expensive to do managed recharge but it is believed that the aquifers in Idaho provide a storage mechanism that has not been fully utilized. He went on to say that the cost of storing water in the ground is far less than the cost of building a new dam and does not have as many of the environmental consequences or constraints as surface storage.

**Mr. Brian Patton, Idaho Department of Water Resources**, continued the presentation with a discussion of a pilot project known as the W-Canal project.

The W-Canal project uses a natural basin located on state land east of Wendell and delivers water through the North Side Canal Company's W-Canal.

**Mr. Patton** said the preliminary plan for the project includes two recharge basins and a pipeline to convey water from the W-Canal into the basins. The project would be designed so that each basin could be operated independently in the event one basin has to be taken off line for maintenance or repairs. The project would also be designed so that it could be expanded in the future if warranted.

**Mr. Patton** showed the Committee a topographic map indicating they have completed delineating the site topography down to a level sufficient to proceed with design work.

**Mr. Patton** said that hydrologic analysis has also been completed that accounts for both flows available for diversion at Milner, making some assumptions, and available canal capacity within the North Side system. As a result of the analysis, they believe that during the modeling period 1982 through 2001 an average of 7,650 acre feet per year could have been delivered to the project site. Taking the 1982 through 2001 model project deliveries, and running them through the ESPA ground water model, show river reach gains benefitting the Devils Washbowl to Buhl reach, Buhl to Thousand Springs reach, Thousand Springs reach and the Malad reach. A chart depicting the results in more detail is available through the Legislative Services Office. **Mr. Patton** said a surprising amount of the water does yield in the reaches above Milner Dam. He said it is important to note that these river reaches show a very rapid response due to recharge at this location both positive (when there is a lot of water to deliver) as well as negative.

**Mr. Patton** went on to discuss what is necessary to move the project forward.

The steps include:

- C Complete the Geotechnical Investigation

This includes infiltration testing to tell how fast the water will infiltrate into the soil, how big the basins need to be, how much native soil needs to be excavated to improve infiltration capacity, etc.

- C Funding Package
- C Easements across private land and leases to use state land
- C Conveyance and operation agreement with North Side Canal Company (NSCC)

The North Side Canal Company would be the ones to deliver that water from Milner Dam down to the recharge site.

- C Final Design
- C State contracting – Water Resource Board must would need to accomplish this through the Department of Administration &

Permanent Bldg. Fund Advisory Council or obtain legislative exemption similar to Transportation Department.

- C Construction – Prefer to contract with NSCC for at least the in-canal work if possible
- C In-canal work must be done when the canal is not in use – other construction can proceed during the irrigation season

**Mr. Patton** said that the preliminary cost estimate for the project is \$602,000 with annual operations and maintenance costs estimated at \$15,000. This does not include the cost to deliver water through the North Side Canal Company which would be subject to agreements worked out with them.

**Mr. Patton** explained that the funding package that has been put together for the project includes:

C	Estimated Project Cost	\$602,000
C	USBR Water 2025 Grant	\$250,000
C	ESPA Mitigation Grant Funds	\$ 81,948 (needs approval of Interim Legislative Committee)
C	LSRARD Funds	\$ 15,000
C	Idaho Water Resource Board	<u>\$255,052</u>
	TOTAL	\$602,000

**Mr. Patton** said the ESPA Mitigation Grant Fund was established by the 2004 Legislature as part of the interim legislation that provided a temporary stay on all of the water calls in the Thousand Springs Reach. This was a one time, \$500,000 pot of money to be allocated for projects that would reduce water use conflicts in that area. The \$81,948 was allocated to a project but never put under contract because the parties involved could not reach agreement. In order to make use of this money, the Idaho Department of Commerce and the Idaho Water Resource Board have executed a contract that would allocate this money to the Water Board for the project. That contract requires approval from the Natural Resource Interim Committee.

**Representative Raybould** said he has been concerned since the advisory

subcommittee meeting regarding this project about the low permeability of the soil. He asked whether they have considered installing perforated pipe or drainage tiles and connecting that with a manifold system and draining that water into an injection well after it has gone down into the soil a little ways in order to filter the water. **Mr. Blew** said yes that has been considered as a possibility.

**Representative Raybould** asked how much that would add to the cost of this project. **Mr. Patton** said it would probably be about 50% and they are hoping they do not have to proceed that way. The hope is to increase the size of the recharge basins.

**Senator Little** asked if maintenance would have to be paid on this project forever. **Mr. Blew** said that it would. **Senator Little** asked if there is anyway to have the canal company or an individual pay those costs in order to avoid having to pay those maintenance costs forever. **Mr. Blew** said they are looking at all possibilities to recover that cost.

**Senator Stennett** said they have listed a number of impediments to recharge and that many areas in the Big Lost sinks can accept a lot of water without any of those impediments. He asked why that area has not been included in the recharge siting issue. **Mr. Blew** said using the Big Lost has a low response time before any increase is seen in the springs where it is needed. There is also the question of where to get the necessary water. In response to another question from **Senator Stennett**, **Mr. Blew** said in his opinion, the advantage of this project is the immediate response that takes place with the springs tributary to the Snake river in the Hagerman Valley. **Senator Stennett** commented that he thinks they can get water at less cost in Big Lost area. **Mr. Blew** said they would look at that issue.

In regard to the 1982 through 2001 model, **Representative Bedke** asked what criteria water availability was based on. **Mr. Blew** said availability was based on water flowing past Milner as well as trying to coincide that with when there would have been available capacity in the canal to deliver the water. They determined it would need a 50 cfs diversion to deliver 35 cfs to the recharge site. They ignored those other constraints being faced currently relative to recharge.

**Senator Coiner** commented that it seems to him that by choosing this site they are tackling a site that can fix only a small percentage of the problem. Looking at the overall Snake Plain, this site would affect a very small minority of the water use and would seem to give the least bang for the buck. In reading the minutes of the

subcommittee regarding the area in Water District 120, he said he was disturbed as to why this site was chosen when there are other areas that are already recharging quite a bit through use during the year. He asked if the upper basin canal companies are all under the winter water savings program that exists in the lower valley. **Mr. Blew** responded that they are, but some Committee members disagreed. **Mr. Blew** said below Palisades, where the Henry's Fork comes in, are all controlled by the Palisades agreement.

**Senator Coiner** asked if they have looked at water management scenarios for these canal companies where they could utilize the shoulder seasons to gain recharge when water is available. **Mr. Blew** said yes, they have developed a scenario for the Upper Snake basin for the recharge of 300,000 acre feet that looks at using shoulder capacity. They have also looked at the area on the Henry's Fork and the St. Anthony Canal. These would require some construction but they could easily do 300,000 acre feet through those systems without even maximizing the losses that could come out of the Aberdeen-Springfield Canal. He said that the issue of water availability still exists in that area.

**Representative Barraclough** said this presentation is a great analysis but they have made it more complex than it really is. He said in his opinion they failed to look at other data relating to recharge that is available in regard to the Snake River Plain. According to **Representative Barraclough**, scarifying is not necessary based on pond studies that he has made. In his studies they found that if a pond is allowed to go dry, the drying killed the algae and restored the original permeability without any need to scarify. **Mr. Patton** said that is why they designed a two pond system. They hope that approach will minimize maintenance costs. They tried to come up with a worst case scenario. **Mr. Blew** agreed with **Representative Barraclough** that looking at one bore hole is not a true representation of a site recharge. He said for this site it is proposed to do a geophysical survey to make sure there is the appropriate underlying geology to make the site work.

**Mr. Patton** said that surface filtration is also necessary from a liability standpoint. If the state is going to be involved in building, operating, and funding projects such as this, without surface filtration, if anything were to happen anywhere across the Snake River Plain Aquifer, the state would be blamed.

In response to a question from **Representative Nielsen** regarding **Representative Raybould's** idea, **Mr. Blew** said they do know that putting water in canals early is

good for recharge but there is the legal question of the Palisades Agreement and how that agreement is interpreted. He said they need to work with Bureau of Reclamation to be able to run water early as well as using the canal companies if the canals are not using their water.

**Senator Stennett** asked whether permission has been obtained from the lessor of a grazing lease on state land to give up his grazing right to allow the state direct access to the land. **Mr. Blew** said that they have been working with the Department of Lands and they require the state to provide offset for loss. He said that will probably require some planting elsewhere on the allotment. The project should not have a big impact on the grazing project.

**Senator Stennett** asked about the location of the project in relationship to the city of Wendell's wells. **Mr. Blew** said the project is located about 2.5 miles upstream from Wendell and they will be in contact with that city before moving forward with the project.

**Senator Little** asked whether there is a way to create incentives for canal companies to overfill their canals when farmers stop irrigating in certain areas if abnormal spring rains occur to provide recharge. **Mr. Blew** said that could be done but there is still a problem with the water right. The water right for the North Side Canal Company does not include recharge. **Senator Little** said perhaps that could be changed.

**Mr. Blew** went on to explain in more detail the need for the interim Committee to approve the use of the \$81,948 for the project. **Mr. Patton** reexplained that the contract has been executed by the Department of Commerce to use that money but it requires approval of the Interim Committee to become effective.

**Senator Coiner** commented that the subcommittee looked at this and it appears that it has already been decided that this project will go forward. **Mr. Patton** said that the subcommittee voted to recommend if for approval to this interim Committee.

After lunch **Mr. Bill Hazen** was introduced to discuss recommendations of the recharge advisory subcommittee regarding aquifer recharge. He distributed a handout relating to his presentation that is available through the Legislative Services Office.

**Mr. Hazen** said the purpose of the recommendations is to outline strategies the state should follow concerning managed aquifer recharge on the Eastern Snake Plain Aquifer. The recharge advisory subcommittee believes that while managed aquifer recharge can play an important role in correcting the situation, it must be recognized that there are inherent problems associated with aquifer recharge which greatly limit the amount of recharge which can be accomplished in a timely manner. He went on to say that it took decades to get where we are and aquifer recharge is simply not a short term remedy, but rather one of several long term management tools. He said that solving the water crisis will not only require legislative action but it will take unprecedented coordination and cooperative action between all water interests.

**Mr. Hazen** said that they support vigorous pursuit of the CREP program, purchase of groundwater rights from willing sellers, conversion of groundwater to surface water, and any program that legitimately reduces groundwater extraction.

**Mr. Hazen** went on to set forth the advisory group's summary of primary managed aquifer recharge issues. Those include:

**1. Establishment of an Aquifer Management Authority**

- C Goals and objectives to plan and carry out recharge efforts
- C Responsibility should include recharge, conversions, CREP, and the purchases of groundwater rights
- C This authority should develop trigger mechanisms for timely management decisions

Mr. Hazen noted to the Committee that Section 4F of the state water plan provides that "(i)t is the policy of Idaho that, where practical, the total water needs of a geographic area be satisfied by a legal entity having the authority and responsibility to address all water needs in a comprehensive manner." **Mr. Hazen** said, in other words, this means that the state water plan recognize that there needs to be an overall authority in an area to accomplish these objectives we're discussing.

He said there have been discussions as to whether the authority could be the Water Board. He said the Water Board can bond, enter into contracts with the federal government and other states, hold water rights and could potentially become the

state water authority. However, this would require some type of staff and funding.

## **2. Realization of the Recharge Potential of Canals**

- C The most logical system for large scale recharge is using the inherent leakage of canal systems during the off irrigation season

However, the following three problems exist to doing that:

- C The Palisades Agreement

**Mr. Hazen** said that the Agreement involves the winter water savings provisions. He explained that when Palisades was put in, a number of canal companies signed an agreement that they would not run water for 150 days November 1 to April 1 in that area. Consequently, Idaho does not have the capability when the canals are empty to put water into those canal systems which could have a huge impact on recharge. This would also be extremely economical because those canals are already built.

- C Storage water carryover
- C Funding for water purchase and conveyance

## **3. Investigation of How Water Sources will be Made Available**

- C A reliable source of water has always been the number one issue preventing a meaningful managed aquifer recharge program.
- C Water Rights for Recharge have limits.
  - C Few exist
  - C Could be subordinate to hydropower

**Mr. Hazen** said the advisory group is of the opinion that the state should actively purchase water rights for recharge.



#### **4. Establishment of Funding for Aquifer Management and Recharge**

- C The advisory subcommittee does not accept the premise that the state's water problems are only the responsibility of agricultural interests.
- C Some type of funding that has a broader base should be used based on the fact that everyone is a user of the resource and each region of Idaho has water quantity issues.

**Mr. Hazen** stated that the subcommittee thinks that a reasonable funding source could be a dedicated portion of the state sales tax. He said that if 1/16th of one cent of the sales tax was used that would generate about \$11 million per year.

**Representative Stevenson** stated that the report addresses the need to be aware of the frenzy of urban development. He said the Committee has worked with the Association of Cities to devise a plan where developers have to bring water with them when they decide to develop land. He asked whether **Mr. Hazen** had any suggestions relating to this issue. **Mr. Hazen** said he did not have any real suggestions and that the subcommittee recognized that the state is growing rapidly and it is something to be aware of. He said that a relatively new development is that today, in the event someone wants to develop a farm, almost every county has required the irrigation water to stay there.

**Senator Schroeder** asked how hydropower interests enter into the discussions. **Mr. Hazen** said that hydropower water rights are quite large. Those were given so that hydropower would have the capability of diverting large amounts of water when it was available. Hydropower has some very large flows on different structures that are difficult to satisfy. Very seldom do flows exceed the rights so that recharge could be done. He suggested having the Department of Water Resources discuss this with the Committee in more detail. **Senator Schroeder** confirmed that the advisory subcommittee did not have any discussions with hydropower interests and **Mr. Hazen** said that was correct.

**Senator Little** asked, regarding peaking waters, if the subcommittee discussed the capacity in rivers and the ramifications of taking all the flow capacity out of the river with floodplain issues. **Mr. Hazen** said historically canal companies in his area have played a large role in keeping flooding down to a minimum by being

able to dissipate some of that energy. He said so far they have been lucky large flows have occurred at times when they are able to divert. He said this is also a concern of Idaho Fish and Game that seasonal flows not be taken away. He noted that there is no danger of recharge alone doing that.

**Senator Burtenshaw** asked for Committee comments regarding whether to proceed with the idea of the recharge project that **Mr. Blew** and **Mr. Patton** explained. He reiterated the need for Committee approval of the \$81,948 that has been contracted by the Department of Commerce. **Senator Schroeder** asked whether the interim Committee could actually approve spending funds or just recommend that to the full Legislature. **Senator Little** explained that the Legislature has already authorized the \$81,948 to be spent.

**Representative Raybould** clarified that this Committee just needs to tell the Department of Commerce where to allocate the funds, just as they did with the other projects one year ago. **Mr. Madarieta**, from the Department of Commerce and Labor explained that the \$81,948 was encumbered from last year so if it is not used, it goes back to the general fund.

**Senator Schroeder** asked, given the fact that excess water is subordinated to hydropower interests, whether water is going to be available for this project.

**Director Dreher** responded that, pursuant to statute, hydropower is not subordinate to recharge. If water is diverted for recharge under a water right, it has to be in priority, meaning that Idaho Power's rights have to be filled or there could be a potential agreement reached with Idaho Power allowing the diversion of some amount of water out of priority for some other consideration. He emphasized that type of agreement does not exist at this time. **Director Dreher** said that the water for the W-Canal site could be excess natural flow or it could be rental pool rentals of storage water. He said that water for the initial phase of this project is fairly modest with a capacity of about 10,000 acre feet per year.

**Senator Schroeder** said what he heard was that the Director believes there will be water in some years, but the details with hydropower have not been worked out.

**Director Dreher** said it depends on the site, if natural flow is being diverted and it is not in priority, there has to be some sort of agreement to facilitate use of that water. If the water used is storage water, that is a different story.

In response to another question from **Senator Schroeder**, **Director Dreher** said

all the Committee is being asked to do is to authorize use of the \$81,948 that has been appropriated for this project. All of the other money is solid and the Committee is not being asked to approve the entire project.

**Representative Raybould** explained that the advisory subcommittee has studied this and while it may not be the most efficient project or use most water most of the time, it is a starting point. It will be a demonstration project on how to do this and to see how it interacts with other water rights. He went on to say that there is a need to establish a project. Once the project is built it will help the state learn how to do other projects and what works and what does not. **Representative Raybould** continued that it was the opinion of the advisory subcommittee to use the \$81,948 as part of this project. He said that in his opinion this is a project that is doable and can be put in place to test what we need to do in the future.

**Senator Stennett** asked whether there are any other competing unfunded projects in Hagerman Valley from last year. **Linda Lemmon**, an audience member with the Thousand Springs Water Users, said other projects were discussed and some would have liked to see those funds go to smaller projects. She said they do support this W-Canal project for the reasons **Representative Raybould** gave. She said they are still looking at other projects but there needs to be a starting point.

**Senator Stennett** made a motion to approve that the \$81,948 be used for the W-Canal project. **Representative Stevenson** seconded.

**Representative Barraclough** said he is going to support the project but asked that the Department look at other studies that have been conducted in Idaho. He said the data is here on the Snake River Plain and they should use it.

**Senator Little** asked what the cost of maintenance on such a project would be annually. **Mr. Blew** reiterated the estimate to be \$15,000 and the Water Resource Board as the sponsor of the project will take that on. He said they are looking at ways to recover some of that cost down the road. **Senator Little** asked if the project will require someone to be near the site to monitor and maintain it. **Mr. Blew** said they plan to work with the North Side Canal Company and hope to use their ditch riders to monitor the project.

The motion carried unanimously by voice vote.

**Representative Stevenson** moved that minutes from the June 10, 2004, meeting be approved. **Senator Schroeder** seconded and the minutes were approved unanimously.

**Mr. Michael Orr, Deputy Attorney General, Natural Resources Division**, was introduced to discuss a survey of domestic water use. Copies of Mr. Orr's handout are available through the Legislative Services Office. The handout included tables showing 13 western states and their requirements, regulations and authorities involved in domestic wells.

**Mr. Orr** explained that Idaho law defines "domestic purposes" as use of water for homes, organization camps, public campgrounds, livestock or for any other purpose in connection therewith including irrigation of up to ½ acre provided the total use does not exceed 13,000 gallons per day. The secondary definition provides for diversion of 2,500 gallons per day or .04 cfs for any other purpose.

**Mr. Orr** noted that Idaho law provides that domestic wells fitting the definition are not required to get an appropriations permit. The right to groundwater for domestic use is established by withdrawal and use and domestic wells are exempt from monitoring and measurement requirements.

**Mr. Orr** said the reasons domestic use may be a concern are:

- C They are exempt from requirement to obtain appropriation permit;
- C There are a relatively large number of domestic wells but little data relating to their effect on aquifers and groundwater;
- C The individual impact is de minimis but the cumulative impact may be significant; and
- C There exists a potential for abuse of the exemption.

**Mr. Orr** indicated that in collecting his data his goal was to obtain an overview of domestic well issues and regulations in the western states. He reviewed, not only statutes, but also administrative regulations and case law regarding domestic wells and contacted water resource agencies and attorney general offices in the surveyed states.

**Mr. Orr's** findings included the following:

- C All other western states also have domestic/exempt/small capacity well statutes or exemptions;
- C Although there is considerable variety in the approaches, Idaho's domestic well statutes are fairly typical;
- C It appears that most (but not all) other states share Idaho's concerns regarding domestic wells;
- C It appears that no state is in front of the issues in terms of taking a proactive approach;
- C Several states have statutes allowing for closure or denial of domestic wells;
- C Several states require state water agency to review and/or approve subdivisions proposals; and
- C There was a recent ordinance passed by the City of Eagle regarding subdivision water supply.

**Mr. Orr** gave the following examples of possible approaches to domestic well issue in Idaho.

- C Eliminate or Modify the Permitting Exemption;
- C Reduce the Permissible Withdrawal Rate/Volume;
- C Reduce Permissible Uses of Domestic Well Water;
- C Require Review of Subdivision Proposals;
- C Require domestic well withdrawal to be recorded and reported;
- C Prohibit/regulate new domestic wells in certain designated areas/districts;
- C Prohibit deepening/repairing/improving domestic wells when the water supply system is or soon will be near the property;
- C Require water supply system hookup when water supply system is or soon will be near the property; and
- C Require closure of domestic well upon hookup to water supply system.

In response to a question from **Representative Nielsen** regarding Mountain Home, **Senator Little** suggested Mountain Home could refuse to annex a development unless it has the water available. **Mr. Orr** said that seems to be what Eagle did and that it can be done on city by city basis. **Senator Little** said then it becomes an annexation issue, not a water law issue. **Mr. Orr** said it is a crossover of both.

**Representative Nielsen** said that 13,000 gallons is 1 inch of water. Under the definition of domestic use, people are allowed to irrigate ½ an acre but that only takes 6,500 gallons. He asked if this has that been looked at. **Mr. Orr** said the average use under domestic rights is about 500 gallons a day and that there may be a disconnect as to what is allowed and what is needed.

**Director Dreher, Idaho Department of Water Resources**, was introduced to discuss the status of water district creations primarily on the Eastern Snake Plain.

**Director Dreher** began by addressing the Upper Salmon Water District. He said the reason this district is being created is due to a negotiated action between the Department and the U.S. Forest Service in reaching settlement of their wild and scenic claims in the SRBA. The SRBA court authorized interim administration that would allow creation of the district on September 29, 2005, and a steering committee was formed and has met twice. A public information meeting will be held in Challis on October 24, 2005, and another hearing in Challis on November 9, 2005.

**Director Dreher** said they try to prepare any right holders that will be subject to the regulation well in advance of action being taken and that is the purpose for the steering committee and the public meetings. The hearing has to be held pursuant to statute to develop the record upon which the final determination is made. It is possible that information could be submitted in the hearing that would alter how this would be implemented. It does not alter the creation of the water district because once rights are decreed in the SRBA it will eventually be in a water district and it will be subject to regulation.

**Director Dreher** said that Water District 130 and Water District 120 were created on the Eastern Snake Plain primarily for the purpose of administering ground water. Water District 130 lies in Administrative Basin 36 and Water District 120 lies in Administrative Basin 35. In the coming months, expansion of both water districts will take place to create a new Water District 140 in Administrative Basin 45, a new Water District 110, and eventually a new Water District 100.

In terms of Water District 140, **Director Dreher** said that the court authorized interim administration in July 2004. A steering committee has not been formed but they have corresponded with local leaders that hold water rights that represent the area. This area has a number of overlapping issues including a critical ground

water area, southwest irrigation district and an operating water district for surface water rights. A public information meeting will be held November 28, 2005, and the hearing will be held in Burley on either December 14 or 15, 2005. This water district will be in operation beginning with the 2006 irrigation season.

**Director Dreher** next addressed water District 130. He said they will soon ask the Attorney General's Office to seek interim administration authority for surface water in Basin 37. This is primarily looking at springs that discharge from the ESPA north of Hagerman but outside of the current boundaries for Water District 130 and 36A. The hearing is yet to be scheduled but will need to occur in the first half of January 2006. This will also be operational for the 2006 irrigation season.

In regard to Water District 120, **Director Dreher** said that the court issued interim administration orders for Basin 25 on July 21, 2005. The Department will be asking the Attorney General's Office to seek interim administration for Basin 27 and are planning to hold a hearing in January, 2006, with the plan for this to be operation for the 2006 irrigation season.

**Director Dreher** said the court authorized interim administration in Water District 110 for Basins 31, 32 and 33 in July 2005. They have had extensive discussion and correspondence with area water right holders and their representatives. Due to these discussions and the small size and close knit nature of the community, a public information meeting is not planned for this area. A hearing will be held on December 6 or 7, 2005. This will also be operational in the 2006 irrigation season.

In regard to Water District 100, **Director Dreher** said that it appears that filing of all the Director's reports in the SRBA will not be completed by December 31, 2005. It appears they are about six months behind schedule and they cannot seek interim administration until the Director's reports are filed. They hope that this district will be operational by the 2007 irrigation season.

In regard to Water District 130, **Representative Stevenson** asked how far north that is going outside of the present boundary. **Director Dreher** said it is the area directly north of Hagerman and includes areas of the Snake river canyon wall that discharge springs similar to the Thousand Springs area. He said that any surface water right in Basin 37 that is not in a water district would be captured in this district. **Director Dreher** noted that at some point, discussions will need to occur

with water right holders as to whether it makes sense to have a mixed use of water rights. He said it might make sense at some point to reorganize the area and look to changing 36A from a water district to a subdistrict.

**Representative Nielsen** said that Mountain Home is trying to form a groundwater district. He asked if something like this will happen if they do not form it on their own. **Director Dreher** explained that these types of water districts are different from groundwater districts. Water districts are required to be created for decreed water rights. Regardless of whether they form a groundwater district in Mountain Home, they will be in this type of water district in the future. He said there is concern with Mountain Home over the lack of action in terms of dealing with the overdrawing of groundwater and that needs to be taken care of or he, as the Director of Idaho Department of Water Resources, will have to do something.

**Representative Raybould** thanked the Committee members, staff and advisory subcommittee members for their participation. He said they will decide whether another meeting is necessary and contact everyone. He also thanked the water users for their input and participation. He said these problems are very great and mean a lot for State of Idaho and agreed that the concerns are not just related to agriculture. Every citizen of the state uses water, so everyone is involved in the issue.

**Senator Burtenshaw** commented that the spring rains helped a lot but did not solve the problems. He said that everyone needs to keep working together to find solutions.

The meeting was adjourned at 3:00 p.m.